

## **422.804**

Executive Order 11246 and FAR subpart 22.8 through the HCA to the SPE for resolution.

### **422.804 Affirmative action programs.**

#### **422.804-2 Construction.**

The HCA shall ensure that each contracting office, awarding nonexempt construction contracts, maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

#### **422.807 Exemptions.**

(a) The Assistant Secretary for Administration is authorized to make the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the HCA to the SPE for determination by the Assistant Secretary of Administration or referral to the Director, Office of Federal Contract Compliance Programs (OFCCP), as appropriate.

### **Subpart 422.13—Special Disabled and Vietnam Era Veterans**

#### **422.1303 Waivers.**

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1303(a) and FAR 22.1303(b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

#### **422.1306 Complaint procedures.**

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act directly to the Department of Labor (DoL) as prescribed in FAR 22.1306.

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### **Subpart 422.14—Employment of the Handicapped**

#### **422.1403 Waivers.**

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a) and (b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

#### **422.1406 Complaint procedures.**

The contracting officer shall forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

## **PART 423—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORK-PLACE**

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423.704 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### Subpart 423.1—Pollution Control and Clean Air and Water

#### 423.101 Applicability.

In addition to the requirement in FAR 23.101, this subpart applies to indefinite-delivery contracts, other than those for commercial items, when the contracting officer estimates that the contract will exceed \$100,000.

#### 423.103 Policy.

The head of the contracting activity (HCA) shall establish a system of instructions to make available to each contracting officer the EPA *List of Violating Facilities* and to ensure the contracting officer reviews the list prior to each proposed award.

#### 423.104 Exemptions.

(a) The Assistant Secretary for Administration is authorized to grant an exemption described in FAR 23.104.

(b) The Senior Procurement Executive (SPE) is authorized to consult with the EPA Administrator regarding a proposed class exemption.

#### 423.106 Delaying award.

Prior to notifying EPA, the contracting officer shall advise the SPE of the need to award before the requested time period expires.

#### 423.107 Compliance responsibilities.

The HCA is authorized to notify the Administrator of EPA of known or suspected noncompliance with clean air or water standards in facilities used in performing nonexempt contracts. A copy of the notification is to be provided to the SPE.

### Subpart 423.2—Energy Conservation

#### 423.203 Policy.

In the acquisition of products and services, USDA will give preference to those that are more energy-efficient.

### Subpart 423.4—Use of Recovered Materials

#### 423.400 Scope of subpart.

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for recycling and waste prevention programs in accordance with Executive Order 12873 and 42 U.S.C. 6962.

#### 423.402 Definitions.

*Mission areas* are USDA organizational elements headed by an Undersecretary or an Assistant Secretary.

*USDA Acquisition, Recycling, and Waste Prevention Program*, issued by the USDA Environmental Executive, provides implementing guidance for Departmental affirmative procurement, recycling, and waste reduction.

The *USDA Environmental Executive* is the Deputy Assistant Secretary for Administration.

#### 423.404 Procedures.

(a) The dollar thresholds described in FAR 23.404(a) apply to USDA as a whole.

(b) *EPA designated items*. The officials identified as Acquisition, Recycling, and Waste Prevention Program (AR&WPP) Coordinators are authorized to approve determinations to buy EPA designated items which do not meet EPA or USDA minimum recovered material content standards.

(c) *Agency designated items*. The USDA Environmental Executive may, without further publication in this chapter, designate items or classes of items containing recovered material to be acquired under the procedures in FAR 23.4 and this subpart.

**423.404-70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).**

(a) *Applicability.* The AR&WPP applies to all USDA organizations; i.e., USDA mission areas, USDA corporations (as described in 31 U.S.C. 9101), and USDA staff offices not included within a mission area.

(b) *Authority.* The AR&WPP has been established to comply with the requirements of Executive Order 12873 to coordinate all environmental programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics.

(c) *Responsibilities.* (1) Each USDA organization will identify one or more AR&WPP Coordinators in writing to represent the mission area, serve on the Council of Coordinators, and work in conjunction with the USDA Environmental Executive.

(2) Each USDA organization periodically will conduct an audit (survey or inventory) of the waste stream generated by the organization. The goals of the audit are:

- (i) To identify and measure the elements of waste generated in its operations;
- (ii) To identify processes, equipment, techniques, or materials which generate waste in energy or materials;
- (iii) To identify actions which can be taken to reduce and to recycle or recover the wastes generated; and
- (iv) To assign time frames to accomplish those actions.

(3) Each USDA organization will implement an avoidance or recovery or recycling program based on the results of the waste stream audit.

(4) Each USDA organization will implement a plan to install on-going waste prevention techniques.

(5) Each USDA organization will ensure that responsibility for preparation, implementation, and monitoring of its affirmative procurement program is shared between program personnel and procurement personnel.

(6) Each USDA organization will establish measurable goals by which the effectiveness of its participation in AR&WPP can be assessed on an annual basis.

(7) Each USDA organization will sponsor annual awards to recognize the most innovative environmental program of the year.

(d) *Acquisition and administration.* (1) Each USDA organization will annually review its product descriptions to enhance the use of recovered materials and environmentally preferable products and services by eliminating from the product description:

- (i) Any exclusion of recovered materials, and
- (ii) Any requirement that items be manufactured from virgin materials.

(2) Each USDA organization will create a promotion program to internally and externally promote its desire to buy recycled products.

(3) Each USDA organization will implement the USDA electronic acquisition system to reduce waste by eliminating unnecessary paper transactions and to foster accurate data collection and reporting of acquisitions.

(4) Each USDA organization will establish an affirmative procurement program specifically for the needs and requirements of its own organization, to maximize environmental benefits, consistent with price, performance, and availability considerations.

(5) Each USDA organization will ensure that the on-going inspection and production surveillance systems in place will monitor the production or the testing of goods and services to verify the recovered material contents reported.

(6) Each USDA organization will include

- (i) Requirements in contracts for contractor operation of Government-owned or leased facilities to provide for waste prevention activities and the recycling of materials and
- (ii) Environmental and recycling factors in the selection process for the acquisition and management of real property.

**Subpart 423.5—Drug-Free Workplace**

**423.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) The contracting officer may recommend waiver of the determination

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to suspend payments, to terminate a contract, or to debar or to suspend a contractor.

(b) The recommendation shall be submitted through the HCA to the SPE and shall include a full description of the disruption of USDA operations should the determination not be waived.

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

### **Subpart 423.6—Notice of Radioactive Material**

#### **423.601 Requirements.**

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

### **Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services**

#### **423.704 Policy.**

In its acquisitions, USDA will give preference to environmentally preferable and energy-efficient products and services.

## **PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

### **Subpart 424.1—Protection of Individual Privacy**

Sec.

424.103 Procedures.

424.104 Contract clauses.

### **Subpart 424.2—Freedom of Information Act**

424.203 Policy.

AUTHORITY: 5 U.S.C. 301 and 40 U.S.C. 486(c).

SOURCE: 61 FR 53646, Oct. 15, 1996, unless otherwise noted.

### **Subpart 424.1—Protection of Individual Privacy**

#### **424.103 Procedures.**

USDA regulations implementing the Privacy Act are found in 7 CFR, sub-

title A, part 1, subpart G. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

#### **424.104 Contract clauses.**

When applicable, the contracting officer shall insert the clause at 452.224-70, Confidentiality of Information, in contracts involving confidential information.

### **Subpart 424.2—Freedom of Information Act**

#### **424.203 Policy.**

USDA regulations implementing the Freedom of Information Act are found in 7 CFR, subtitle A, part 1, subpart A. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

[61 FR 53646, Oct. 15, 1996. Redesignated at 63 FR 26995, May 15, 1998.]

## **PART 425—FOREIGN ACQUISITION**

### **Subpart 425.1—Buy American Act—Supplies**

Sec.

425.102 Policy.

425.105 Evaluating offers.

425.108 Expected articles, materials, and supplies.

### **Subpart 425.2—Buy American Act—Construction Materials**

425.202 Policy.

425.203-425.204 [Reserved]

### **Subpart 425.3—Balance of Payments Program**

425.302 Policy.

425.304 Excess and near-excess foreign currencies.

### **Subpart 425.4—Trade Agreements**

425.402 Policy.